IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 41 of 1988

For Approval and Signature:

Hon'ble MR.JUSTICE M.H.KADRI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

STATE OF GUJARAT

Versus

HARIKRISHNA PRAJAPATI

Appearance:

Mr. K.P. Raval, APP for appellant.

MR JB DASTOOR for Respondent No. 1

CORAM : MR.JUSTICE M.H.KADRI

Date of decision: 02/12/2000

ORAL JUDGEMENT

Appellant, in this appeal filed under Section 378 of the Code of Criminal Procedure, has challenged the order of acquittal recorded by the learned 2nd Joint Civil Judge (JD) & Judicial Magistrate (F.C.), Vadodara for the offences punishable under Section 342 & 354, Indian Penal Code.

2. Complainant Prabhudas Madhavbhai Patel was residing along with his family members near Swaminarayan Mandir, Vadodara. The respondent was also residing in the adjoining room of the complainant. On December 13, 1984 around 6.00 AM Vijeta, daughter of complainant had gone to throw away garbage on the nearby road and when she was returning to her room the respondent caught hold of her and dragged her to his room and locked the room from inside and tried to outrage her modesty. Vijeta raised shouts and on hearing the shouts the complainant's wife Parsanben came to the rescue of Vijeta. The door was broken and Vijeta was rescued. On being questioned Vijeta told her parents that the respondent had dragged her inthe room and lockedthe room from inside and had tried to outrage her modestry. The complaint came to be lodged by the father Prabhudas Madhavlal Patel in the Wadi police station. The PSI, M. Vinayak M. Trivedi who was at the relevant time discharging duties at Wadi police station carried out the investigation and on completion of it filed chargesheet against the respondent for the offences punishable under Section 342 & 352 Indian Penal Code.

3. Charge, Exhibit 3 was framed against the respondent for the above stated offences. The charge was read over and explained to the respondent wherein respondent pleaded not guilty and claimed to be tried. To prove the charge against the respondent the prosecution examined PW 1, Prabhudas Madhavbhai the complainant; PW 2 Ghanshyam Purshottam; PW 3 Urmilaben Motilal; PW 4 Parsanben Bhimji; PW 5 Prosecutrix Vijetaben Prabhudas; PW 6 Karsanbhai Kanjibhai; and PW 7, Investigating Officer, V.M. Trivedi. After the prosecution evidence was over the respondent was questioned generally and his statement came to be recorded under Section 313 of Criminal Procedure Code. In the further statement the respondent stated that a false case has been made out against him and because of enmity the witnesses who were closely related had deposed against him.

4. The learned Magistrrate, on appreciation of oral as well as documentary evidence and the submission of the learned advocates of the parties acquitted the respondent from the charges framed against him which has given rise to filing of this appeal by the State.

5. Learned APP, Mr. K.P. Raval has taken me through the entire record & proceedings produced at the trial. It is submitted that the learned Magistrate had

erred in not appreciating and believing the evidence of the prosecutrix Vijeta who was rescued by her mother deposed that the respondent had locked her inside the room and had tried to outrage her modesty. The learned APP further submitted that the evidence of the parents had fully corroborated the evidence of prosecutrix and therefore this appeal be allowed and the respondent be convicted for the charges framed against him.

6. The submission of the learned APP, in my opinion, deserves to be rejected. The learned Magistrate had carefully considered the evidence led by the prosecutrix and the parents examined at the trial. There was inconsistency about the room being locked from inside. In the complaint, the father of the prosecutrix had stated that when the incident had taken place, one Chandravadan Mulchand Khatri and one Chandubhai Dulabhai Taylor were also present and prosecution had not examined independent witness. The learned Magistrate had also observed that there were many improvements and contradictions in the version of the prosecutrix. It may be stated that the landlord of the complainant had filed a suit for eviction against the complainant wherein father of the respondent had deposed and thereafter the complainant had a grudge against the family of the respondent. This fact was also admitted by Karsanben who is the mother of the prosecutrix. The learned Magistrate had noticed that there was great variance between the deposition of the complainant and the allegation made in the complaint. It is also pertinent to note that the witnesses who were examined by the prosecution had not deposed before the Court that when the door was opened the respondent was found inside the room. It is also required to be stated that the prosecutrix at the time of the incident was aged 20 years and inspite of that fact she had not lodged complaint before the police station and instead of her, the father had lodged the complaint after two hours of the incident. From the evidence produced by the prosecution it emerges that because of the previous enmity the respondent was falsely involved in this incident. It is worth noting that in the room in which the incident was alleged to have taken place other family members of the respondent were residing. The incident had taken place early in the morning and it is difficult to believe that other family members were not present when the incident as alleged had taken place. In view of this inconsistency in the version of the prosecution, in my opinion, the learned Magistrate had not committed any error in acquitting the respondent from the charges framed against him. The learned APP has not been able to dislodge the reasonings and findings

recorded by the learned Magistrate in acquitting the respondent.

7. This is an acquittal appeal in which the Court would be slow to interfere with the order of acquittal. Infirmities in the prosecution case go to the root of the matter and strike a vital blow on the prosecution case. In such a case, it would not be safe to interfere with the order of acquittal more particularly when the evidence has not inspired confidence of learned Magistrate who had an advantage of observing demeanour of witness. On overall appreciation of evidence, I am satisfied that there is no infirmity in the reasons assigned by learned Magistrate for acquitting the respondent. Suffice it to say that learned Magistrrate has given cogent and convincing reasons for acqutting the respondent and learned Public Prosecutor has failed to dislodge the reasons given by learned Magistrate in order to convince me to take the view contrary to the one already taken by the Court of learned Magistrate. Therefore, the acquittal appeal deserves to be dismissed.

3. Hence, this appeal is dismissed.

[M.H. Kadri, J.]

rmr.